

BRB No. 08-0212

D. H.)
)
 Claimant-Respondent)
)
 v.)
)
 MASSMAN TRAYLOR JOINT VENTURE) DATE ISSUED: 01/24/2008
)
 and)
)
 TRAVELERS INDEMNITY COMPANY)
)
 Employer/Carrier-)
 Petitioners) ORDER

By letter dated November 14, 2007, employer forwarded its Notice of Appeal dated October 18, 2007, accompanied by an affidavit and documentation asserting that the notice was mailed on October 18, 2007. Employer appeals the administrative law judge's Decision and Order (2006-LHC-01830) dated September 18, 2007, and filed in the Office of the District Director on September 20, 2007. Employer's appeal has been assigned BRB No. 08-0212. All future correspondence must bear this number.

Claimant has filed a Motion to Deem Petitioner's Notice of Appeal as Having Been Filed on October 18, 2007, Nunc Pro Tunc. Section 802.205(a) of the Board's Rules of Practice and Procedure provides that a notice of appeal must be filed with the Board within 30 days from the date upon which the decision was filed in the Office of the District Director. 20 C.F.R. §802.205(a); see 33 U.S.C. §921(a), (b). In this case, the administrative law judge's Decision and Order was filed on September 20, 2007. Therefore, the 30-day filing period expired on October 19, 2007.

Although Section 802.207(a) of the Board's Rules provides that a notice of appeal is considered filed as of the date it is received in the Office of the Clerk of the Board, Section 802.207(b) provides that if the notice of appeal is sent by mail and fixing the date of delivery as the date of filing would result in a loss of appeal rights, the appeal will be considered to have been filed as of the date of mailing. 20 C.F.R §802.207(a), (b). In this case, employer's notice of appeal was postmarked on October 18, 2007, as demonstrated by the documentation employer submitted to the Board on November 14,

2007. Employer's appeal, postmarked on October 18, 2007, therefore was timely filed. 20 C.F.R. §802.207(b).

Claimant also has filed a motion to dismiss employer's appeal as interlocutory. Employer has not responded to this motion. Employer's appeal is of a non-final order, as the administrative law judge addressed only the coverage issue raised by the parties and neither awarded nor denied benefits. *See, e.g., Arjona v. Interport Maintenance*, 24 BRBS 222 (1991). The Board ordinarily does not undertake review of non-final orders. *See, e.g., Butler v. Ingalls Shipbuilding, Inc.*, 28 BRBS 114 (1994). In this case, the administrative law judge's decision does not meet the criteria of the "collateral order doctrine," *see Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271 (1988), and thus the Board need not accept the appeal on this basis. *Tignor v. Newport News Shipbuilding & Dry Dock Co.*, 29 BRBS 135 (1995).

Where the collateral order doctrine is not applicable, the Board ordinarily will not grant interlocutory review, unless, in its discretion, the Board finds it necessary to direct the course of the adjudicatory process. *See Baroumes v. Eagle Marine Services*, 23 BRBS 80 (1989); *Niazy v. The Capital Hilton Hotel*, 19 BRBS 266 (1987). The Board has accepted appeals of decisions addressing only the claimant's entitlement to coverage under the Act, *see* 33 U.S.C. §§902(3), 903(a), where the parties have indicated that any other issues have been or can be resolved without a hearing. *See, e.g., Caldwell v. Universal Maritime Serv. Corp.*, 22 BRBS 398 (1989); *Jackson v. Straus Systems, Inc.*, 21 BRBS 266 (1988). In this case, however, claimant avers that the parties have not agreed to resolve the outstanding issues and that the Board's entertaining employer's appeal will delay the prompt resolution of his claim.

We grant claimant's motion to dismiss employer's appeal. Under the circumstances presented here, the Board's review of employer's appeal would bifurcate the case and delay the resolution of claimant's claim. Thus, it is not in the interest of judicial economy to grant interlocutory review. *Arjona*, 24 BRBS 222. Once the administrative law judge issues a final decision awarding or denying benefits, employer may raise any issues it seeks to raise now by filing a new appeal within 30 days of the filing of the compensation order. *Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994).

Accordingly, employer's appeal is dismissed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge